

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
F&B Communications, Inc.)	WC Docket No. 08-71
f/k/a Farmers' and Business Men's)	
Telephone Company)	
)	
Petition for Waiver of Section 54.802(a))	
of the Commission's Rules)	

PETITION FOR WAIVER OF SECTION 54.802(a)

Pursuant to Section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, F&B Communications, Inc. f/k/a Farmers' and Business Men's Telephone Company (the “**Company**”; USAC Service Provider Identification Number: 143028094), by counsel, respectfully requests a waiver of the June 30, 2010 deadline to submit quarterly line count data used to calculate Interstate Access Support (“**IAS**”), as set forth in section 54.802(a) of the Commission's rules. In support of its petition, the Company states as follows:

1. BACKGROUND AND INTRODUCTION.

Pursuant to section 54.802(a) of the Commission rules, in order to receive Interstate Access Support, a competitive eligible telecommunications carrier (“**ETC**”) must submit to USAC the number of lines served by the competitive ETC in a given service area according to a specific schedule. Competitive ETCs must submit data no later than June 30 for the quarterly line count as of March 31 of the same year.

The Company is a small competitive local exchange carrier serving approximately 826 CLEC access lines, as of September 1, 2010, in eastern Iowa (study area code: 359007). The June 30, 2010 filing was only the second IAS quarterly filing prepared and filed by the Company's staff. Previously, a consulting company prepared the filings on behalf of the Company. The Company is a small, rural carrier with very limited staff. Consequently, the Company's office manager was the only employee responsible for preparing and filing the IAS report.¹ The office manager and the Company's general manager were out of town at a USDA/RUS Broadband Initiatives Program Post Award Workshop the week before the filing was due. The employee responsible for the filing added the quarterly IAS filing to the Company's list of quarterly reports. However, due to the fact that all of the Company's other quarterly reports are prepared by the end of July, and the absence of two key staff members just prior to the end of the quarter, the June 30 IAS quarterly filing was inadvertently overlooked. The responsible employee attempted to file the IAS report electronically as soon as she realized the missed deadline, on July 12, 2010. She was unable to submit the filing electronically because the deadline had passed, so she sent the quarterly filing via email to USAC on July 13, 2010. A true and correct copy of the Company's email accurately reflecting the transmission date and time and including the attached filings sent to USAC on July 13, 2010 is attached hereto as **Exhibit B**. As a result, the Company attempted to file the IAS quarterly report electronically seven business days late, and USAC received the filings by email eight business days late. The Company has never previously missed a USAC filing deadline.

¹ See Exhibit A to Petition, Declaration of Julie Steines.

2. DISCUSSION.

The Commission's rules may be waived for good cause shown and "where the particular facts make strict compliance inconsistent with the public interest."² The Commission has made clear in several decisions over the past few years that good cause exists and the public interest is advanced where ETCs (1) have filed the required data only days after the filing deadline, (2) have taken steps to ensure future compliance and (3) will otherwise lose funding that could negatively impact universal service programs.³ Each of those circumstances is present here.

A. The Company Submitted the Filings Within Days of the Deadline.

The Commission has routinely granted petitions to waive quarterly filing deadlines where an ETC has inadvertently missed the deadline by a matter of days. In a recent order, the Commission granted the waivers of several petitioners who made required USAC filings between one and fourteen business days after the deadlines.⁴ The Commission found that by submitting the filing less than fourteen business days after the filing deadline, "the petitioners promptly remedied their errors."⁵ The Company attempted to submit its filing seven business days after the deadline and emailed the filing to USAC eight business days after the deadline. The Company discovered the missed

² 47 C.F.R. § 1.3; *Verizon Communications Inc. Petition for Waiver of Section 54.802(a) of the Commission's Rules*, Order, CC Docket No. 96-45, 21 FCC Rcd 10155, 10156-57 ¶ 6 (2006) ("*Verizon Order*").

³ See *Verizon Order*; *Xfone USA, Inc. Petition for Waiver of Sections 54.307(c) and 54.802(a) of the Commission's Rules*, Order, WC Docket No. 08-71, 24 FCC Rcd 4813 (2009); *AT&T Communications of NY and AT&T Communications of California Petition for Waiver of Section 54.802(a) of the Commission's Rules*, Order, CC Docket No. 96-45, 22 FCC Rcd 953 (2007) ("*AT&T Order*"); *NPCR, Inc. Petition for Waiver of Sections 54.802(a) of the Commission's Rules*, Order, CC Docket No. 96-45, 22 FCC Rcd 560 (2007) ("*NPCR Order*").

⁴ *In re Petitions for Waiver of Universal Service High-Cost Filing Deadlines et al.*, Order, WC Docket No. 08-71, CC Docket No. 96-45, 25 FCC Rcd 843, 854-855 ¶ 22 (2010).

⁵ *Id.*

deadline and submitted the filing well within the amount of time the Commission has previously found to justify granting a waiver.

B. The Company Has Taken Steps to Ensure Future Compliance.

The Commission has also looked favorably on requests for waivers of filing deadlines where an ETC has taken steps to eliminate future data submission deadline errors.⁶ The Company has committed to revise its internal procedures to ensure compliance with all future filing deadlines. First, the Company implemented a new procedure in which two persons, including the Company's general manager, are now responsible to verify that the quarterly reports are completed and submitted to USAC in a timely manner. Previously, only one person was responsible for filing the reports. Second, the Company has scheduled automated calendar reminders to provide early notice of upcoming deadlines to personnel responsible for filing. Finally, the Company will assign internal deadlines for gathering information and preparing filing materials to ensure preparation and submission of filings in advance of the filing deadline. When considering similar commitments to ensure compliance, the Commission has previously found that "strict enforcement of the filing deadline would disproportionately penalize [the ETC] when considered in light of its actions to remedy its error."⁷

C. Granting the Requested Waiver is in the Public Interest Because the Company Will Otherwise Lose Funding That Could Negatively Impact Universal Service Programs.

Finally, the Commission has recognized that where quarterly line count data have been filed only days late and corrective measures have been implemented, denying the waiver would "undermine [an ETC's] investments in its network, and thus its ability to

⁶ *AT&T Order*, 22 FCC Rcd at 955-56 ¶ 9; *NPCR Order*, 22 FCC Rcd at 563 ¶ 9; *Verizon Order*, 21 FCC Rcd at 10158 ¶ 10.

ensure that customers have and maintain access to adequate services."⁸ The Commission has determined that IAS support is critical to ensuring that consumers in all areas have access to affordable telecommunications services and that local exchange carriers can invest in their networks in the face of dramatically lower access charges.⁹ Grant of a waiver of Commission rules is necessary, in this instance, to prevent the Company from being adversely affected.

The Company is a small business, operating in a rural eastern Iowa service area, and the universal service support it receives constitutes a significant portion of its capital and operating budget for the rural area it serves. Receipt of universal service support, and IAS funding in particular, is critical to the Company's mission of providing affordable, high-quality telecommunications services to its subscribers and future subscribers in this high-cost area. Denying a waiver in this circumstance would be contrary to the public interest because requiring the Company to forego support for which it qualifies would cause the Company a significant financial hardship that would detrimentally affect its provision of service in rural Iowa. If the instant waiver is not granted, the Company will not only lose its third quarter IAS support, but it will also be required to repay most of its second quarter IAS support. This is the Company's first failure to meet a USAC filing deadline, and strict enforcement of the filing deadline in this case would disproportionately disadvantage the Company and, consequently, harm the very consumers intended to benefit from the federal universal service program.

In addition to offering universal service to consumers in rural Iowa, the Company is also actively working to build out its network in its rural service area. The Company

⁷ *AT&T Order*, 22 FCC Rcd at 955 ¶ 6.

⁸ *Verizon Order*, 21 FCC Rcd at 10157 ¶ 8.

has plans to construct new facilities in its service area, including a plan to construct a broadband infrastructure project to serve areas that are at least 75% rural, which is financed in part by the Broadband Initiative Program. Uninterrupted IAS support is crucial to enable the Company both to provide universal service to underserved rural areas and to enable the Company to construct and upgrade networks in its high-cost rural areas. Future projects to construct and improve the Company's infrastructure may be jeopardized if IAS funding is not provided. While the Company has invested millions of dollars to bring telecommunications services to its customers in rural areas, it could not do so without IAS support. Consumers in rural Iowa who are expecting continued and rapid deployment of facilities would therefore be harmed by the denial of the requested waiver.

The requested waiver will not cause any hardship for USAC or other universal service fund recipients because the amount of universal service fund support received by the Company is very small compared to the overall size of the universal service fund, and USAC received the filings via email only eight business days after the deadline. Accordingly, the Commission's grant of the Company's requested waiver would enable the Company to continue to receive IAS support and to further the goals of universal service and serve the public interest. No other party will be prejudiced by a grant of this waiver request and consumers in rural Iowa who are expecting continued telecommunications services would be harmed by its denial. USAC will not be prejudiced by the late filings, which were received only eight business days after the deadline.

⁹ *Verizon Order*, 21 FCC Rcd at 10157 ¶ 8.

Conclusion

For the foregoing reasons, the Company respectfully requests that the Commission promptly grant its petition for a waiver of section 54.802(a) and direct USAC to accept the Company's quarterly interstate access support submission for the quarter ending June 30, 2010.

Respectfully submitted,

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